

## **Attachment 1**

### **Background and Summary of Recommended Process to Distribute Off Highway Vehicle In-Lieu Fee Funding**

This attachment provides a question and answer section that is intended to provide background information about Off Highway Vehicle In-Lieu Fees as well as an outline of a proposed process to distribute a portion of these fees to other agencies and non-profit organizations. It also includes the relevant sections of the Vehicle Code and Public Resources Code which guide the distribution and use of these fees.

#### What Are OHV In-Lieu Fees?

The California Vehicle Code includes registration and other fees that are paid by the owners of off highway vehicles. One of the annual fees paid is an In-Lieu Fee of \$4 per vehicle. This fee is distributed to cities and counties based upon the proportion of off highway vehicle use which occurs within the jurisdiction. The state makes the determination of estimated use within jurisdictions.

#### How much does the County receive in OHV In-Lieu Fees?

Prior to 2006, the fee was distributed based upon population. The County received approximately \$4,000 per year. In 2006, the formula for distribution was revised. The state now distributes these fees to jurisdictions on the basis of the state's estimate of the off highway vehicle use in the jurisdiction. The change resulted in a substantial increase in the annual amount of OHV In-Lieu Fees received by the County. Currently, the County annually receives approximately \$160,000 in OHV In-Lieu fees.

#### Does the law require distribution of the OHV In-Lieu fees to other organizations and is there a time limit in which the funds have to be spent?

There is no legal requirement for the County to distribute these funds to other agencies or organizations. However, the Board of Supervisors has the discretion to allocate OHV In-Lieu Fees to other agencies and non-profit organizations provided that the allocated funds are applied to uses consistent with those identified in Public Resources Code Section 5090.50. There is no time limit in which these funds must be distributed or used by the County.

#### What are the allowable uses of these funds?

Vehicle Code Sections 38230 and 38240 allow for the collection of the fees and require that they be used consistent with the uses identified in Public Resources Code 5090.50. This section of

the Public Resources Code relates to uses allowed under a State grant program which uses other funds, separate from the OHV In-Lieu Fees provided to the County, to provide grants to agencies and non-profits. It is important to note that the State grant program connection to the In-Lieu Fee Program is that In-Lieu Fees must be spent consistent with the uses allowed in State grant program. Other aspects of the State grant program, such as the percentage of funds related to each use, do not apply.

The allowed uses are all related to recreational off highway vehicle use. There are four general categories of uses. These are as follows:

1. Maintenance, operation, planning, development of off highway trails and facilities associated with off highway vehicles.
2. Ecological restoration or repair of damage caused by off highway vehicles
3. Law enforcement entities and related equipment related to off-highway vehicle use.
4. Education for safe and responsible use off highway vehicles or safety programs associated with off highway vehicle recreation.

The referenced Vehicle Code and Public Resources Code sections are at the end of this attachment.

#### How has the County Distributed these fees?

The first distribution of OHV In-Lieu Fee funding occurred in 2008. At a regularly scheduled Board of Supervisors meeting, the Board considered several proposals for the use of these fees. During this meeting, the Board also considered limiting the use of these fees to one-time projects rather and using the County's annual budget process for future distribution of OHV Fees. The Board approved several proposals at the 2008 meeting and also approved the recommendation to use the funds for one time projects and the allocation of the funds through the County budget process. Since that time, distribution of the fees has been through the annual budget process.

#### How have the fees been used?

Over 80% of the allocated OHV In-lieu Fee funding has been applied to projects in the Oceano area. Several other projects outside of the Oceano area were also funded. The following is a listing of projects funded with OHV In-lieu Fees.

- Installation of barriers to prevent illegal access of off highway vehicles on the Arroyo Grande Creek levee (\$82,000 – Flood Control District Zone 1 and 1A)
- Repair of damage to the Arroyo Grande Creek Levee from off-highway vehicle use (\$100,000 –

Flood Control District Zone 1 and 1A)

- Removal of sand from Pier Avenue (\$30,000 – County Public Works roads)
- Sand removal and barrier installations in the Strand Way area adjacent to the Oceano Dunes State Vehicle Recreation Area (ODSVRA) (\$103,000 – County Public Works roads)
- Equipment for the Oceano Fire Station to support response to the ODSVRA (\$54,600 -Oceano Community Services District)
- Purchase of off highway quad vehicles for Sheriff response to the ODSVRA (33,700 -County Sheriff Department).
- Funding to improve electrical systems at the Coastal Dunes Recreation Vehicle Park adjacent to the ODSVRA (\$50,000 – County Parks)
- Contribution to assist in the funding of a consultant study to determine methods to reduce fugitive dust from the ODSVRA (\$25,000 – Air Pollution Control District and State Parks)
- Construction of barriers to prevent illegal off highway vehicle access on the hillsides above Cayucos (\$40,000 County Public Works roads)
- Several projects involving environmental studies and trail restoration work on off highway motorcycle trails in the Los Padres National Forest (\$58,000 – funding applied to California Conservation Corps, US Forest Service and the non-profit Central Coast Motorcycle Association)

In 2010, distribution of funding was largely curtailed and OHV In-Lieu fee funds were retained in trust account as a hedge against the potential future County expense related to APCD requirements to mitigate fugitive dust from off highway vehicle use on the Oceano Dunes. Approximately \$450,000 has been set aside. As the issue of fugitive mitigation is not yet resolved, staff will continue to recommend retention of the OGV In-Lieu Fees currently on hand as a funding source for potential future expense related to the fugitive dust mitigation issue.

Are there geographical limitations on where these funds can be used?

No. The funds can be used in any part of the County. However, the funds must be applied to projects that are consistent with the allowable uses identified in the Public Resources Code and they must have a direct tie to off highway vehicle use.

Why is the distribution process being revised?

Funds from OHV In-Lieu Fees have predominantly been allocated to County departments. The County Administrator has asked staff to evaluate processes to distribute the future OHV In-Lieu Fee annual revenue with a goal to increase the awareness of these funds and locate partners in implementing projects consistent with the allowable uses.

### What process is being proposed?

Staff proposes to evenly split the future annual OHV In-Lieu Fee revenues between the County and other agencies and non-profit organizations. The funds that would remain with the County would continue to be handled as budget augmentation requests submitted by county departments as part of the annual budget process.

The funds that would potentially be distributed to other non-profit organizations would be handled through a new process. The concept is based upon a process used in another county that also receives OHV funds and uses their Parks Commission/Committee to review and recommend projects for funding.

The concept being proposed is to establish an annual noticing and application period seeking proposals for the use of the funds. Organizations proposing projects would submit a standardized application to County Park staff. Staff would review the applications for consistency with the allowable uses. Applications consistent with allowable uses would be presented to the Parks Commission for their review. The Parks Commission would recommend projects that would then be included in the County budget. The review and recommendation of the Parks Commission will occur at a regularly scheduled Parks Commission public meeting.

The implementation of this process is pending approval by the Board of Supervisors. Changes to the process and time lines may occur based upon Board action and further evaluation of the process steps needed to implement this concept. Below is an outline of the potential time frames and process.

- September – Noticing and Application Period
- October – Staff review
- November – Parks Commission
- February – Parks submits budget with funding for projects
- May – Proposed Budget released
- June – Budget Hearings before the Board of Supervisors
- July – Funds available for distribution

The annual amount for distribution to other agencies will vary with the amount of OHV In-Lieu actually fees received in any one year. If the historical revenue amounts hold, a 50 – 50 split between County and other organizations would mean that there may be between \$75,000 and

\$80,000 available to distribute, after accounting for a few thousand dollars for Parks staff to implement the process.

The following are sections of the Vehicle Code and Public Resources Code which identify the source and distribution of funds as well as the uses allowed.

### **Vehicle Code Sections – OHV In-Lieu Fees**

38230. In addition to the fees imposed by Section **38225**, there shall be paid a four-dollar (\$4) fee for the issuance or renewal of identification for every off-highway motor **vehicle** subject to identification. The fee imposed by this section is in lieu of all taxes according to value levied for state or local purposes.

38240. (a) The Controller shall allocate the fees collected under Section 38230 in July and January of each fiscal year to cities and counties based upon the proportional estimated off-highway motor **vehicle** use and related activity within the respective jurisdictions pursuant to the report described in subdivision (d) of Section 5090.15 of the Public Resources **Code**.

(b) The funds collected under Section 38230 shall be used for the purposes set forth in Sections 5090.50 and 5090.64 of the Public Resources **Code**.

(c) In addition to the purposes set forth in subdivision (b), funds received by a city or county pursuant to this section may be expended for facilities located outside the limits of the city or county if both of the following conditions are met:

(1) The funds are expended for the purposes of acquiring, developing, and constructing trails, areas, or other facilities for the use of off-highway motor vehicles.

(2) The funds are expended pursuant to an agreement with the city in which the facility is located or with the county in which the facility is located if the facility is located in an unincorporated territory.

## Public Resources Code

*Note: The beginning of each allowable use category is shown in highlighting/shading. The percentages shown in the allowable use categories are not applicable to the distribution of OHV In-Lieu Fees*

**5090.50.** (a) The division shall develop and implement a grant and cooperative agreement program to support the planning, acquisition, development, maintenance, administration, operation, enforcement, restoration, and conservation of trails, trailheads, areas, and other facilities associated with the use of off-highway motor vehicles, and programs involving off-highway motor vehicle safety or education.

(b) When appropriated by the Legislature for grants and cooperative agreements, available funds shall be awarded in accordance with the following categories:

### (1) Operation and maintenance.

(A) Fifty percent of the funds appropriated by the Legislature pursuant to subdivision (a) of Section **5090.61** shall be expended solely for grants and cooperative agreements for the acquisition, maintenance, operation, planning, development, or conservation of trails and facilities associated with the use of off-highway motor vehicles for recreation or motorized access to nonmotorized recreation.

(B) Guidelines developed to implement this paragraph, pursuant to subdivision (d), shall at a minimum:

(i) Give preference to applications that sustain existing off-highway motor vehicle recreation opportunities.

(ii) Give additional consideration to applications that improve facilities that provide motorized access to nonmotorized recreation opportunities.

(C) Applications that would affect lands identified as inventoried roadless areas by the Forest Service of the United States Department of Agriculture are eligible for cooperative agreements under paragraph (1) if the application is for a project that does any of the following:

(i) Realigns a forest system road or trail to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a classified route and that cannot be mitigated by route maintenance.

(ii) Reconstructs a national forest system road or trail to implement a route safety improvement project on a classified route determined to be hazardous on the basis of accident experience or accident potential on that route.

(iii) Maintains a road or trail that is included in the National Forest Road and Trail System on or before January 1, 2009.

(D) Any unencumbered funds under this paragraph shall only be used in future grant cycles for purposes consistent with this paragraph.

### (2) Restoration.

(A) Twenty-five percent of the funds appropriated by the Legislature pursuant to subdivision (a) of Section **5090.61** shall be expended solely for grants and cooperative agreements for projects that provide ecological

restoration or repair to habitat damaged by either legal or illegal off-highway motor vehicle use.

(B) The division shall develop and implement, in consultation with the Wildlife Conservation Board, a competitive grant and cooperative agreement program which shall be administered in accordance with this paragraph.

(C) Funds identified in this paragraph shall be available for grants and cooperative agreements for projects that provide ecological restoration or repair to habitat damaged by both legal and illegal off-highway motor vehicle use.

(D) Eligible projects include:

(i) Removal of a road or trail or restoration of an area associated with the rerouting and subsequent closure of a designated road or trail.

(ii) Removal of roads or trails and the restoration of damaged habitats in any area that is not designated for motorized vehicle use.

(iii) The removal of closed roads or trails, or a portion of a closed road or trail, that will help to prevent off-highway motor vehicle access to closed areas.

(iv) Scientific and cultural studies regarding the impact of off-highway motor vehicle recreation not otherwise required by state or federal laws.

(v) Planning to identify appropriate restoration techniques, strategies, and project implementation, including planning associated with environmental review.

(vi) Restoration projects that generally improve and restore the function of natural resource systems damaged by motorized activities.

(E) Eligible applicants include local, state, and federal entities, Native American tribes, educational institutions, and eligible nonprofit organizations.

(F) Guidelines developed to implement this paragraph shall at a minimum do all of the following:

(i) Give additional consideration to applications for projects that will restore areas that have the potential for the most significant environmental damage.

(ii) Guarantee that no grant will be used for the development or maintenance of trails for motorized use.

(G) Any unencumbered funds under this paragraph shall be used only in future grant cycles for purposes consistent with this paragraph.

### **(3) Law enforcement.**

(A) Twenty percent of the funds appropriated by the Legislature pursuant to subdivision (a) of Section 5090.61 shall be available for law enforcement grants and cooperative agreements and shall be allocated to local and federal law enforcement entities for personnel and related equipment. The amount of the grant or cooperative agreement shall be proportionate to the off-highway motor vehicle enforcement needs under each entity's jurisdiction.

(B) The division shall develop a method to determine the law enforcement needs for each applicant. Forty percent of law enforcement grants and cooperative agreements shall be given to local law enforcement entities, 30

percent to units of the United States Bureau of Land Management, and 30 percent to units of the United States Forest Service.

(C) The division shall develop eligibility guidelines for law enforcement projects. The guidelines, at a minimum, shall require the applicant to do all of the following:

(i) Specify formal and informal cooperation with other appropriate law enforcement entities, including any applicable federal entities.

(ii) Establish a policy on how violations of off-highway motor vehicle laws and regulations will be enforced on federal land, if the applicant is a local law enforcement entity.

(iii) Identify areas with high priority law enforcement needs because of public safety, cultural **resources**, and sensitive environmental habitats, including wilderness areas and areas of critical environmental concern.

(iv) Explain whether the applicant is recovering a portion of law enforcement costs directly associated with privately sponsored events where sponsors have obtained a local permit.

(v) Establish a public education program that includes information regarding safety programs offered in the area and how to report off-highway motor vehicle operation violations.

(vi) Specify how personnel is trained and educated regarding off-highway motor vehicle safety and resource and cultural protection.

(D) Notwithstanding subdivision (h), law enforcement entities that receive funds allocated pursuant to this paragraph shall be subject to a financial and performance audit at least once every five years.

The audits may be conducted in a random order. As part of the audit, the department shall consider whether the law enforcement entity has spent the grant money in accordance with its application.

(4) Education and safety. Five percent of the funds appropriated by the Legislature pursuant to subdivision (a) of Section 5090.61 shall be available for grants and cooperative agreements that either provide comprehensive education that teaches off-highway motor vehicle safety, environmental responsibility, and respect for private property, or provide safety programs associated with off-highway motor vehicle recreation.

***NOTE: This is the end of the allowable uses in Section 5090.50. The following relates to the State grant program and are not requirements for the distribution of OHV In-Lieu Fees. They are included to show the entire section.***

(c) Eligible grant and cooperative agreement applicants include:

(1) Cities, counties, and districts that have approval to apply for grant funds, in the form of a resolution from their governing body.

(2) State agencies for projects under paragraph (2) of subdivision (b).

(3) Agencies of the United States.



(4) Federally recognized Native American tribes.

(5) Education and nonprofit organizations for eligible projects described in subdivision (f).

(d) Guidelines developed to implement this program shall at a minimum do all of the following:

(1) Distribute grants and cooperative agreements on a competitive basis, except for law enforcement grants allocated in accordance with paragraph (3) of subdivision (b).

(2) Be developed with public input, including focus groups.

(3) Require applications to be in accordance with local or federal plans and the strategic plan for off-highway motor vehicle recreation prepared by the division.

(4) Require grant applicants to comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000)). Applicants for cooperative agreements shall complete environmental review procedures that are at least comparable to those of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(5) Require the applicant to agree to provide matching funds or the equivalent value of services or material used, in an amount not less than 25 percent of the total project cost.

(6) Require the applicant, if it is a city or county, to disclose how fees collected pursuant to Section 38230 of the Vehicle **Code** are being used and whether the use of these fees complements the applicant's project.

(7) Fund all eligible applications to the extent feasible.

(e) All grants and cooperative agreements involving ground disturbing activities shall be subject to the uniform application of soil and wildlife habitat protection standards specified in Section **5090.53**.

(f) Grants may be awarded to educational institutions and nonprofit organizations. Eligible projects shall be limited to scientific research, natural resource conservation activities, trail and facility maintenance, restoration, and programs involving off-highway motor vehicle safety or education. If the application for grant funds involves activities on any public lands, all of the following shall apply:

(1) The applicant shall include a work plan for the project.

(2) The applicant shall provide written permission from the appropriate land manager to conduct a project, including a description of how the project fits with the land management goals of the area.

(3) The applicant shall provide matching funds or the equivalent value of volunteer services or material used, in an amount not less than 25 percent of the total project cost.

(4) The applicant shall be fiscally responsible for adhering to the terms and conditions of the grants.

(g) The deputy director of the division shall not participate in the scoring of grants or cooperative agreements.

(h) The department shall conduct an annual financial audit of the grants and cooperative agreements program. During each year, the department shall also conduct, or cause to be conducted, an audit of the performance of a minimum of 20 percent of grant and cooperative agreement recipients.

(i) The division shall establish an administrative appeal process as part of the grants and cooperative agreements program. At a minimum, this process shall do all of the following:

(1) Give applicants the right to appeal on the following grounds:

(A) The division failed to follow regulations established for the award of grants and cooperative agreements.

(B) The division lacked sufficient factual evidence to support or deny the award of a grant or cooperative agreement.

(2) Require the applicant to first appeal to the deputy director of the division. If that appeal is denied, the applicant may then appeal to the director of the division, or the director's appointee.

(3) Require applicants to file their first appeal within 30 calendar days following the notice of award or denial of a grant or cooperative agreement. Notice of the decision or the rejection of the appeal shall be issued within 60 days following the filing of an appeal.

(4) Require applicants to exhaust these appeal rights prior to seeking other legal remedies through the courts.

(j) A grant shall not be made, nor a cooperative agreement entered into, pursuant to this section without the approval of the director.